

This record is a partial extract of the original cable. The full text of the original cable is not available.

UNCLAS SECTION 01 OF 03 PANAMA 000144

SIPDIS

SENSITIVE

DEPARTMENT FOR WHA/CEN
SOUTHCOM ALSO FOR POLAD
VANCOUVER FOR CG ARREAGA

E.O. 12958: N/A

TAGS: [PGOV](#) [PREL](#) [PM](#) [POLITICS](#) [FOREIGN](#) [POLICY](#)

SUBJECT: PANAMA: CONSTITUTIONAL REFORM IS NOW A FACT

REF: PANAMA 01963

SUMMARY/COMMENT

1. (SBU) Panama's revised constitution, now in effect for one month, fulfills a key goal of President Torrijos's domestic political agenda. The entire constitutional revision process -- from its post-May 2004 national election start to its November 15 appearance in the national register -- took only five months. While most of the changes are clear improvements, some observers claim that the amendments mostly are superficial "patches" to a dictatorship-era constitution that should be completely rewritten. Without disputing that directly, Torrijos, whose Democratic Revolutionary Party's (PRD) legislative majority assured easy passage in the Assembly, told El Panama America, "I'm convinced that we've made a giant step in the modernization of the State."

2. (SBU) Discussion, approval, and implementation of the reform package entailed a convoluted procedure. President Torrijos remitted the reforms approved by the outgoing, Arnulfista-dominated legislature in July to incoming legislators during the first week of September, who approved the package on October 26. After President Torrijos signed the package, it entered into effect on November 15. Most of the approved reforms have immediate effect. Others only take effect after the 2009 national election, such as capping the size of the Legislative Assembly at 71 and eliminating double redundancy for vice presidential, legislative, and mayoral alternates. Overall, the reforms offer a quick-fix to some of Panama's most egregious political practices. End Summary.

Overview of the Changes

3. (SBU) The principal constitutional amendments aim to:

- reduce the number of elected officials
- reduce the transition period between administrations
- limit legislative immunity, change the legislature's name from "Legislative Assembly" to "National Assembly" and change the title of legislators to "diputados," a semantic move to expand their national law-making purview
- prohibit the President from appointing Supreme Court Justices directly from the Cabinet or legislature
- mandate a referendum to ratify and plan for Canal expansion, and
- define a mechanism for convoking a Constituent Assembly (Constituyente)

4. (SBU) The constitutional reforms aim to reduce government payrolls by cutting the number of Vice Presidents from two to one, cutting the number of legislative seats to 71 (fixed) from 78 (variable, tied to population), reducing the number of legislative alternates from two to one per legislator, and reducing the number of Deputy Mayors from two to one. Those changes will take effect after the 2009 election.

5. (U) The revised constitution cuts the transition time between new administrations and legislatures to two months (from four). Future Inauguration Days will fall on July 1 instead of September 1. All officials elected on May 1, 2004 will finish their terms two months "early" on June 30, 2009. (COMMENT: Many Panamanians complained about the four-month transitions between the Moscoso and Torrijos administrations, noting that the lengthy period created virtual paralysis on policy and decisionmaking -- with the notable exception of the constitutional reforms themselves. END COMMENT.)

Legislative immunity reduced

6. (SBU) The new constitution permits the Supreme Court, without Assembly permission, to investigate legislators involved in unethical and/or illegal actions, a change that sharply reduces legislative immunity. (Note: Except for one notorious 1994 case when a legislator was caught in the act of bribing businessmen, the Assembly had rejected all Public Ministry requests to investigate its members, including Carlos Afu, who became notorious for waving what he claimed was a down payment on thousands of dollars in bribe money before television cameras in 2002. End note.)

Changes to the Judicial Branch

17. (SBU) The revised constitution forbids legislators or Cabinet members from serving on the Supreme Court until they have been out of office for five years and requires that judicial alternates ("suplentes") be appointed from within the judicial branch. (COMMENT: The President can no longer appoint lawyers, whose firms may have cases before the Court, as alternates. This move addresses widespread public complaints regarding conflict of interest between prominent law firms and the high court. More importantly, this change is a direct response to President Moscoso's appointment of two members of her cabinet to the Supreme Court. On the other hand, the new language would conceivably permit President Torrijos to appoint longtime PRD partisans to Panama's highest court, thereby counteracting the purported intent of de-politicizing the Court. END COMMENT.)

18. (SBU) Article 221 permits the Attorney General (AG) and the Solicitor General (SG) to appoint their own alternates from within the Public Ministry to represent them during absences, eliminating the president's former power to make 10-year appointments to such posts.

Electoral Tribunal Independence

19. (SBU) The revisions increase the independence of the Electoral Tribunal (TE) by giving it more budgetary control and by explicitly prohibiting Supreme Court oversight of electoral matters in most cases. This reform also codifies procedures to appoint the three electoral magistrates for staggered 10-year terms.

Comptroller General

10. (SBU) The revised Article 281 establishes a "Tribunal de Cuentas" to investigate, prosecute and rule on malfeasance of government accounts, pending legislative action. Previously, the Comptroller General (CG) held those powers.

Contempt Out, Wiretaps In

11. (SBU) Under the constitutional revision, Supreme Court justices lose their former power to jail or fine people for contempt without trial, which had been applied capriciously and to partisan political ends.

12. (SBU) The revised Article 29 permits wiretapping with prior authorization, which the constitution previously forbade. Evidence obtained from unauthorized wiretaps is not admissible in court.

Political parties "democratized"

14. (SBU) The revised constitution requires political parties to democratize their internal structures and operations. But the Assembly decided not to change a provision that allows political parties to unseat their members from the legislature, an effective tool to enforce party discipline, regardless of constituent sentiment. (COMMENT: The PRD was the only party that held primaries before the May 2004 election. Other parties, particularly, Mireya Moscoso's Arnulfista Party, have suffered heavy criticism for failing to practice internal democracy. END COMMENT.)

Reforms With Presidential Fingerprints

15. (SBU) Two new provisions reflect particular presidential interests: One eliminates the age requirement for foreign adopted children of Panamanian nationals who want to become Panamanian citizens (previously they had to be 18 years old). That change will permit former President Moscoso's 13-year-old son, adopted in Costa Rica, to be naturalized. The other prohibits discrimination based on disabilities. President Torrijos' daughter, Daniela, is a child with special needs.

Indigenous Over-representation?

16. (SBU) A new constitutional provision assigning two legislative seats to the Kuna and three to the Ngobe-Bugle indigenous groups may be challenged before the Supreme Court. Critics claim that new provision disproportionately favors the two groups (since under this provision 4% of the population would have 7% of the legislators). Critics also allege that it is racially discriminatory.

Procedure for Constitutional Convention

17. (SBU) The revised constitution spells out how a constitutional convention (Constituyente) may be convoked -- i.e., by a presidential decision, with legislative approval; by a 2/3 Legislative Assembly vote; or by petition of 20% of citizens over age 18 (about 380,000 people). The new text must then be submitted to a national referendum. The

Constituyente may not introduce retroactive changes or alter the terms of sitting elected officials.

WATT